RONALD J. TENPAS
Acting Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice

CHRISTY L. KING
E-mail:
Wisconsin Bar Number: 1038373
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044
Telephone: (202) 514-1707
Facsimile: (202) 514-2583

GEORGE S. CARDONA
United States Attorney for the
Central District of California

Attorneys for the United States of America

FILED

2007 AUG 28 PM 1:22

CLERK, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
EASTERN DIVISION

BY:

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

PREMIER INDUSTRIES, INC.,

Defendant.

ED CV 07 - 01092 SGL (OPx)

Case No.

COMPLAINT

COMPLAINT OF PLAINTIFF FOR CIVIL PENALTIES PURSUANT TO THE CLEAN AIR ACT

Plaintiff, the United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(b), and pursuant to 28 U.S.C. §§ 1331 and 1345.

2. Venue is proper in this District under Section 113(b) of the CAA, 42 U.S.C. § 7413(b) because the violations occurred in this District.

NATURE OF ACTION

3. This is a civil action brought against Premier Industries, Inc. ("Premier" or "Defendant") pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), for the assessment of civil penalties for violations of the CAA and the federally-approved California State Implementation Plan ("SIP") at its expandable polystyrene ("EPS") foam manufacturing and processing facility located at 5635 Schaefer Avenue in Chino, San Bernardino County, California (hereinafter the "Facility").

AUTHORITY

4. Authority to bring this action is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516 and 519 and Section 305(a) of the CAA, 42 U.S.C. § 7605(a).

5. Notice of the commencement of this action has been given to the appropriate air pollution control agency in the state of California, as required by Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

DEFENDANT

6. Defendant owned and operated the Facility in Chino, California until on or about April 30, 2007 when it transferred the Facility and other assets to Insulfoam, LLC, which was subsequently acquired by Carlisle SynTec Inc. Defendant is, and at all times relevant hereto was, a corporation incorporated in the state of Washington.

7. Defendant is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

STATUTORY AND REGULATORY BACKGROUND

CAA and National Ambient Air Quality Standards

8. The CAA was enacted to protect and enhance the quality of the Nation's air, Section 101(b) of the CAA, 42 U.S.C. § 7401(b). Section 109(a) of the CAA, 42 U.S.C. § 7409(a), requires the Administrator of EPA to publish national ambient air quality standards ("NAAQS") for certain air pollutants. The NAAQS establish primary air quality standards to protect public health and secondary standards to protect public welfare. Section 109(b) of the CAA, 42 U.S.C. § 7409(b).

9. The Administrator has promulgated NAAQS for ozone. 40 C.F.R. § 50.9 and 50.10 (July 18, 1997).

10. Ozone is formed when volatile organic compounds ("VOCs") react with pollutants, such as nitrogen oxides, in the presence of sunlight. VOCs are therefore considered a precursor to ozone and are regulated.

11. Pursuant to Section 107(d)(1)(A) of the CAA, 42 U.S.C. § 7407(d)(1)(A), each state is required to designate those areas, or districts, within its boundaries where the air quality attains the NAAQS, fails to attain the NAAQS, or cannot be classified due to insufficient data (unclassifiable). Areas that meet the NAAQS for a particular pollutant are called "attainment" areas for that pollutant, while areas that do not meet the NAAQS for a particular pollutant are

called "non-attainment" areas.

12. The Facility is located in the Los Angeles - South Coast Air Basin ("South Coast Air Basin") in the county of San Bernardino.

13. The South Coast Air Basin was designated as a non-attainment area for ozone in 1978. 43 Fed. Reg. at 8964, 8972 (March 3, 1978). At all times relevant to this action, the South Coast Air Basin has been designated non-attainment for ozone. It is currently designated as non-attainment for ozone under the one hour and the eight hour standard. 40 C.F.R. § 81.305 (July 1, 2006).

SIPs and Non-Attainment

14. Section 110(a) of the CAA, 42 U.S.C. § 7410(a), requires each state to submit to EPA, for approval, a plan that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region in the state and sets forth requirements that must be included in each plan. These plans are known as State Implementation Plans ("SIPs").

15. The state of California submitted, and EPA approved, a SIP for California. The SIP is made up of rules and regulations applicable to specific geographic areas within the state. Since the Facility is located in Chino, San Bernardino County, California, the SIP provisions applicable to the Facility are those approved by EPA and promulgated by the South Coast Air Quality Management District ("District") and ("District Regulations").

16. The Clean Air Act amendments of 1990 required, for areas designated as non-attainment for ozone, that states correct or add requirements to the reasonably available control technology ("RACT") requirements in their SIP. Sections 182(a)(2)(A) and 182(e), 42 U.S.C. §§ 7511a(a)(2)(A) and 7511(e).

17. The State of California submitted Rule 1175 as a corrected RACT rule for regulation of VOCs for the South Coast Air Basin. EPA approved Rule 1175 into the SIP in 1994. 59 Fed. Reg. at 43,751-43,753 (August 25, 1994).

18. Rule 1175 is, and at all times relevant has been, a part of the federally approved and enforceable SIP.

Rule 1175

19. Rule 1175 regulates the manufacturing operations of polymeric cellular products, which include expandable polystyrene products. Rule 1175(a).

20. Relevant to this action, the Rule regulates emissions from EPS operations. Rule 1175(b)(5) defines EPS operations as those that use polystyrene beads and blowing agents which are expanded by exposure to steam or other expansion agents and processed through molds to create cellular products. The foam products manufactured at the Facility meet this definition.

21. The Rule regulates VOC emissions from EPS operations. Rule 1175(b)(6).

22. All steps of the manufacturing operation and the storage of final product are subject to the requirements of the Rule. Rule 1175(a); Rule 1175(b)(7).

23. The Rule's emission control requirements for EPS operations are listed in 1175(c).

24. Rule 1175(c)(2) requires that "[t]he owner or operator of an expandable polystyrene (EPS) molding operation shall demonstrate . . . that manufacturing emissions and post-manufacturing emissions, assuming all the blowing agent is released from the product, are less than 2.4 lbs per 100 lbs of raw material processed."

25. The owner or operator of an EPS molding operation is further required to submit a plan to the District that demonstrates compliance with Rule 1175(c)(2). Rule 1175(c)(3).

26. Rule 1175(c)(4)(A) requires the owner or operator to, "[s]ubmit permit applications for the installation of an emission control system within four months of the date that compliance with such requirements was not achieved."

Rule 1175(c)(4)(B) requires the owner or operator to install and operate an "approved emission control system" with all emissions vented only to the approved emission control system.

27. An approved emission control system is defined as one that collects at least 90%, by weight, of the manufacturing emissions (capture) and reduces the emissions collected by at least 95%, by weight, (destruction). Rule 1175(b)(1).

28. Rule 1175(c)(4) further requires that if the facility processes more than 800,000 pounds per year of raw material, then emissions from the final manufactured product must be vented only to the approved emission control system for at least 48 hours. Rule 1175(c)(4)(B)(ii).

SIP Enforcement

29. Violations of the SIP are violations of the CAA, and are enforceable by the Administrator, Section 113(b) of the CAA, 42 U.S.C. § 7413(b); 40 C.F.R. § 52.23 (September 18, 1974).

30. Under CAA Section 113(a)(1), 42 U.S.C. § 7413(a)(1), when the Administrator finds that a person has violated a SIP, the Administrator shall notify that person, as well as the State in which the person operates, of such finding. The Administrator is then authorized under CAA Section 113(b), 42 U.S.C. § 7413(b), to commence a civil action for the SIP violation at any time more than thirty days following the date of the Administrator's notification under CAA Section 113(a)(1), 42 U.S.C. § 7413(a)(1).

31. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), EPA may commence a civil action for an injunction and to recover per day civil penalties for each violation of the CAA, including violations of a SIP. Pursuant to 40 C.F.R. § 19.4 (February 13, 2004) (Table), the amount of civil penalties that may be assessed is up to $27,500 per day for each violation occurring between January 30, 1997 and March 15, 2004, and up to $32,500 per day for each violation occurring after March 15, 2004.

GENERAL ALLEGATIONS

32. Until on or about April 30, 2007, Defendant owned and operated a polymeric cellular foam products manufacturing facility in the South Coast Air Basin which is subject to District Regulations, including Rule 1175.

33. Defendant used polystyrene beads to manufacture its foam products. The beads contained pentane which is a VOC.

34. The Facility emits pentane during its manufacturing process, including during: 1) opening the containers holding the raw beads, 2) transferring the raw beads to the pre-expanders, 3) expanding the beads, 4) drying the pre-expanded beads, 5) transferring and aging the pre-expanded beads, 6) transferring the pre-expanded beads for molding, 7) block molding the pre-expanded beads, 8) transferring molded block to the storage room, 9) cutting the molded blocks and 10) storing the molded blocks.

35. At all times relevant to this action, Defendant's Facility processed more than 800,000 pounds per year of raw material.

36. At all relevant times, the South Coast Air Basin was designated as a non-attainment area for ozone.

37. In November 2001, the Facility was tested to determine the amount of pentane in the final product and to determine the amount of VOC emissions that were captured and destroyed by the Facility's emission control system. The test results indicated that the residual pentane in the finished blocks was 3.10 lbs VOCs/100 lbs of raw material, and the emission control system had a capture efficiency of only 76%.

38. Defendant submitted actual emission data to EPA subsequent to this test. The emission data documents that at least as early as January 2001, Defendant's emissions exceeded the limit in Rule 1175(c)(2).

39. Therefore, beginning in at least January 2001, Defendant failed to comply with Rule 1175(c)(2) when it failed to "demonstrate that manufacturing

emissions and post-manufacturing emissions, assuming all the blowing agent is released from the product, are less than 2.4 lbs per 100 lbs of raw material processed."

40. Defendant failed to comply with Rule 1175(c)(3) which requires the owner or operator of the polymeric cellular manufacturing operation to submit a plan to the District that will demonstrate compliance with Rule 1175(c)(2).

41. Defendant also failed to comply with Rule 1175(c)(4) which requires an owner or operator that has not achieved the requirements of 1175(c)(2) or (c)(3), to submit an application for the installation of an emission control system within four months of the date compliance with Rule 1175(c)(2) or (c)(3) was not achieved. Beginning in at least January of 2001, Defendant failed to achieve compliance with Rule 1175(c)(2). Defendant did not submit an application for installation of an emission control system until September 2003.

42. Pursuant to Rule 1175(c)(4)(B), within twelve months of failing to meet the requirements of Rule 1175(c)(2) or (c)(3), the owner or operator must install and operate an approved emission control system with all sources of manufacturing emissions vented only to the approved system and with all emissions from the final manufactured product vented only to the approved emission control system, for at least 48 hours.

43. Defendant failed to install and operate an approved emission control system within the twelve month period required by the Rule. Defendant installed a regenerative thermal oxidizer ("RTO") system in late 2004, and the system became operational in early 2005, but Defendant failed to demonstrate that its RTO is an approved emission control system pursuant to Rules 1175(c)(4)(B)(i) and 1175(b)(1).

44. Throughout its ownership and operation of the Facility, Defendant failed to comply with the requirements of Rule 1175(c)(4)(B)(ii) which specify that all emissions be vented to the approved emission control system for at least 48 hours.

45. Beginning in August 2002, Defendant obtained District issued variances with respect to the operation of its Facility out of compliance with Rule 1175. These variances do not affect Defendant's obligation to comply with the federally approved SIP requirements applicable to the Facility because EPA never approved the variances as modifications of the SIP.

46. Operation of the Facility in violation of Rule 1175 constitutes a federally enforceable violation of the SIP and of the Clean Air Act. In June 2004, EPA issued a Notice of Violation to the Defendant.

CLAIM FOR RELIEF

47. Paragraphs 1 through 46 of the Complaint are realleged and incorporated herein.

48. Defendant failed to comply with and demonstrate compliance with Rule 1175 since at least January 2001.

49. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant is liable for civil penalties up to $27,500 per day for each day of violation occurring between January 30, 1997 through March 15, 2004, and up to $32,500 per day for each day of violation after March 15, 2004. 40 C.F.R. § 19.4 (February 13, 2004) (Table).

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully prays and requests that this Court:

1. Assess civil penalties up to $27,500 per day for each day of violation occurring between January 30, 1997 through March 15, 2004, and up to $32,500 per day for each violation after March 15, 2004.

2. Award the United States its costs in this action.

3. Grant the United States such other relief as the Court deems just and proper.

Respectfully submitted,

RONALD J. TENPAS
Acting Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division

By:
CHRISTY L. KING
E-mail:
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044
Telephone: (202) 514-1707
Facsimile: (202) 514-2583

GEORGE S. CARDONA
United States Attorney for the
Central District of California

Of Counsel:
ANN LYONS
E-mail:
California Bar Number - 120636
Assistant Regional Counsel
United States Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105
Telephone: (415) 972-3883
Facsimile: (415) 947-3570

CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2007 I mailed by Federal Express the foregoing Complaint to the Clerk of the Court. I further certify that on August 27, 2007 I mailed the foregoing document by first-class mail to the following:

Agent for Service for Premier Industries, Inc.
Harry Edward Grant
Riddell Williams P.S.
1001 Fourth Avenue, Suite 4500
Seattle, WA 98154

Agent for Service for Insulfoam LLC
Donna Diamond
Weston, Benshoof, et al.
333 S. Hope St., 16th Floor
Los Angeles, CA 90071

Counsel for Environmental Protection Agency
Ann Lyons
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street, ORC-2
San Francisco, CA 94105

By: _____
CHRISTY L. KING
E-mail:
Wisconsin Bar Number: 1038373
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044
Telephone: (202) 514-1707
Facsimile: (202) 514-2583